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EXAMINER

LEWIS, RALPH A

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/502,213

Applicant(s)

MINORETTI ET AL

Examiner

Ralph A. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 10-15 and 18-23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Objection to the Drawings

The drawings are objected to under 37 CFR 1.84 (i) and (p) as being informal. The lines, numbers and letters lack uniformity and are fuzzy lacking sharp definition. No new matter should be entered.

Replacement drawings are required. The objection to the drawings will not be held in abeyance.

Objection to the Claims

Claims 1-23 are objected to under 37 CFR 1.75(a) for failing to particularly point out and distinctly claim the subject matter which applicant regards as his/her invention.

In general the English of the present claims is awkward. The examiner suggests careful review and necessary revisions. More particularly;

In claim 1, line 6, it is unclear what the “essentially” language is trying to impose. In line 11, the “fixation means” lacks a specified function – i.e. “means for ...” The last three lines of the claim relating to the “second distracter module” are awkward and confusing.

Claim 3, is awkward and confusing.

In claim 4, line 5, the “pivoting” limitation is not understood. The second and third elements are longitudinally received within the sleeve in a rotating manner with the screw threads, but this is not a “pivot.”

Claim 5 is confusing.

In claim 7, the orientation of the hinge axis is dependent on how one chooses to install it.

In claim 9, it is unclear how "fixation parts are formed by drill holes."

Claim 10, is unclear.

In claim 11, it is suggested that applicant claim the structure of the slotted hole, rather than the manner in which it is made.

In claim 14 and 15, convention "means for . . ." language is suggested. In claim 14, there is no antecedent basis for "the leg."

In claim 16, there is no antecedent basis for "the one hinge-half."

In claim 17, there is no antecedent basis for "the two legs."

In claim 18, it is confusing to refer to the telescoping threaded connection as a "pivot."

Rejections based on Prior Art

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-9, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Witzig (US 4,433,956) in view of Testa (US 6,358,255).

Witzig discloses a distractor module that meets all the limitations of applicant's "first distractor module." More particularly, note U-shape with mid section 11, end segments 12 and linear distraction elements 13. Witzig, however, fails to disclose the claimed second distractor module. The present claims call for no interaction or even common use between the first and second distractor modules. A medical supply cabinet or supply store that happened to have both types of distractor modules available would meet the limitations of the present claims, regardless of even whether or not the two modules were even used together. Testa discloses a distractor module 1 comprised of segments (halves) that are hinged together wherein in one half segment can be related to a frontal segment to be distracted and another segment to the chin (Figures 11A, 12). For a doctor or medical supply company to have both a Witzig device and a Testa device available in their inventory would have been obvious to one of ordinary skill in the art.

Claims 1–9, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razdolsky et al (US 5,829,971) in view of Testa (US 6,358,255).

Razdolsky et al disclose a distractor module that meets all the limitations of applicant's "first distractor module." More particularly, note U-shape with mid section 15, end segments 3 and linear distraction elements 8. In regard to claim 3, note Figure 8. Radolsky et al, however, fail to disclose the claimed second distractor module. The present claims call for no interaction or even common use between the first and second distractor modules. A medical supply cabinet or supply store that happened to have

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both types of distractor modules available would meet the limitations of the present claims, regardless of even whether or not the two modules were even used together. Testa discloses a distractor module 1 comprised of segments (halves) that are hinged together wherein in one half segment can be related to a frontal segment to be distracted and another segment to the chin (Figures 11A, 12). For a doctor or medical supply company to have both a Radolsky et al device and a Testa device available in their inventory would have been obvious to one of ordinary skill in the art.

Prior Art

Robinson et al (US 5,364,396), Razdolsky (US 5,775,907), Kreidler et al (US 5,855,580), Guerrero et al (US 5,885,290), Casey (US 5,911,574), Remmler (US 5,993,448), Robinson (US 6,050,819), Talos et al (US 6,053,919), Schumacher et al (US 6,325,803), Sellers (US 6,423,069), Schendel (US 6,589,250), Ralph et al (US 6,666,867), Triaca et al (EP 1 147 745) and Minoretti et al (WO 02/089682) are made of record.

Allowable Subject Matter


Claims 10-15 and 18-23 would be allowable if rewritten in independent form and to include all of the limitations of the claims from which they depend and to overcome the indefinite objections set forth above.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (571) 272-4720.

R.Lewis
March 17, 2006



Ralph A. Lewis
Primary Examiner
AU 3732